

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COUNTER TERRORIST GROUP US,  
COUNTERR GROUP, and J. K. IDEMA,

08 Civ 2356 (DAB)

Plaintiffs,

- against -

DECLARATION OF  
ROBERT SIMPSON

AUSTRALIAN BROADCASTING CORP.;  
a/k/a ABC AUSTRALIA; ABC  
CORPORATIONS 1-100; LIZ JACKSON;  
ERIC CAMPBELL; JOSEPH A. CAFASSO;  
EDWARD A. ARTIS; KNIGHTSBRIDGE  
INTERNATIONAL, INC.; KNIGHTSBRIDGE  
INTERNATIONAL HUMANITARIAN  
RELIEF AND HUMAN IMPROVEMENT  
PROGRAMS, INC.; ROBERT C. MORRIS;  
PARTNERS INTERNATIONAL  
FOUNDATION; WILLIAM JOHN HAGLER,  
Both Individually and Severally, and DOES 1  
through 7, inclusive,

Defendants.

ROBERT SIMPSON declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am Director Legal and serve as the General Counsel of defendant the Australian Broadcasting Corporation (“ABC”) in the above-captioned action.

2. I am duly authorized by the ABC to submit this affidavit in support of its motion to dismiss the complaint herein without prejudice on the grounds of, *inter alia*, lack of subject matter jurisdiction under F.R.Civ.P., Rule 12(b)(1) and/or the doctrine of *forum non conveniens*.

3. I submit this affidavit to put before the Court certain facts regarding (i) the organization and operation of the ABC; (ii) its media affairs television series titled *Media Watch* (the “Series”); (iii) the specific “*Jack of All Trades*” program at issue in this litigation broadcast on March 7, 2005 (the “Program”); and (iv) the location of what we believe to be the material witnesses and documents. Many of the facts set forth below are known to me from my duties



and responsibilities at the ABC. Some are taken from the public record and others I have amassed from the appropriate people within our organization whom I would contact to obtain this information in the regular course of my job.

4. Certain relevant background documents including the complaint in this action are annexed to the accompanying affidavit of one of our U.S. counsel, Edward J. Davis, sworn to May 20, 2008 ("Davis Aff't"). Also accompanying this motion are the affidavits of co-defendants Liz Jackson and Eric Campbell, both submitted in support of ABC's motion to dismiss. Mr. Campbell has not yet been served. Ms. Jackson's affidavit is also submitted in support of her motion to dismiss for lack of personal jurisdiction as to her, pursuant to F.R.Civ.P. Rule 12(b)(2). We also submit and rely upon the expert declaration of John Sheahan dated May 21, 2008 ("Sheahan Decl."). Mr. Sheahan is a senior barrister in Australia. In his declaration, Mr. Sheahan explains that Australia is an adequate alternative judicial forum for plaintiffs to litigate the claims they assert in this action.

5. As explained in the accompanying memorandum of law, this dispute does not belong in a United States court. Both the private interests of the parties in this action and, critically, the public interest in having localized disputes resolved locally, weigh heavily in favor of an Australian forum. As set forth more fully below and as readily apparent from the complaint (Davis Aff't, Ex. A), this dispute arises from and concerns an Australian television program, produced and broadcast in Australia, about media coverage – primarily Australian media coverage – of events that took place in Afghanistan, and some documents from that program that were uploaded on the ABC's website in Australia. Plaintiff Idema complains that he was defamed in this Australian broadcast and that he owns the copyright in three photos used in the Program and on the website without his authority. He also claims to have entered an



agreement in Afghanistan with defendant Eric Campbell (an ABC reporter) concerning certain tapes that Idema claims to own, approximately 25 seconds of which appeared on the Program, and complains about a book Campbell wrote about Afghanistan that was later published in Australia. The facts here, quite simply, have nothing to do with New York.

**THE BUSINESS OF THE ABC**

6. The ABC is a not-for-profit media corporation existing under the Australian Broadcasting Corporation Act 1983. It was founded in 1929 and made into a state-owned corporation in 1932 (then known as the Australian Broadcasting Commission).

7. Currently, the ABC produces and disseminates media programs and information services throughout metropolitan and regional Australia, broadcasts nationally in this country on television and radio, and makes some materials available on the Internet. The ABC operates 60 local radio stations, in addition to four national radio networks and an international service named Radio Australia. The broadcast footprint of Radio Australia does not extend to the United States. Some Radio Australia programming may be accessed online in other countries including the U.S. via the Radio Australia website, but Radio Australia does not carry the Series or make it available online.

8. The ABC operates two national television channels: Channel ABC1 (the main ABC television channel) shows programs including first-run comedy, drama, documentaries, and news and current affairs programs, including the Series in issue. Channel ABC2, launched in 2005, is a digital-only channel that airs some programs repeated from ABC1, as well as some original content including news programs, children's shows, animation, and music shows.

9. The ABC also operates what is known as the Australia Network, an international satellite television service aimed at the Asia-Pacific region and funded by advertising and grants from the Australian Department of Foreign Affairs and Trade. This service broadcasts a mixture



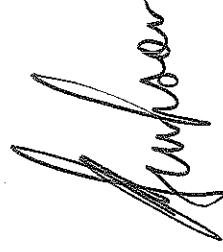
of English-language programming, including general entertainment, sport, and current affairs. The Australia Network is intended to reach the Asia-Pacific region, where its broadcast transmissions are targeted. (If any of its transmissions could possibly be received in any part of the U.S., that would only be the result of unintended spillover of satellite signals directed to the Asia region.) The Series is not broadcast or carried online by the Australia Network.

10. The ABC is a "free to air" broadcaster and is largely funded by the Australian government, although it receives some limited additional funding through profits made by its commercial arm, ABC Commercial, which licenses and distributes certain content and programs to third parties, including foreign media entities; profits are then reinvested in the ABC. No such licensing has taken place in relation to the Series or the Program.

11. The principal place of business of the ABC is in Sydney, New South Wales, Australia. Most of the ABC's offices and employees are in Australia proper. The ABC employs over 4,000 people in Australia, and less than 100 outside of Australia. The ABC has 14 news bureaus/offices around the world which cover international stories and issues of importance and newsworthiness, but with a particular emphasis on issues and events of interest to Australians for our networks.

12. The ABC maintains two small, leased, convenience offices in the United States, one in New York and one in Washington D.C. The New York office has one contract employee, an Australian, who is responsible for providing local assistance in the U.S. for non-news ABC programs. The ABC also has a news bureau in Washington D.C., so that ABC reporters can obtain news and transmit it back to the ABC for news programming.

13. The ABC does not direct advertising to the United States and does not promote its broadcasts or programs in any way that is targeted to the United States or a United States market.



THE MEDIA WATCH SERIES

14. *Media Watch* is a television series produced and broadcast only in Australia. All employees for the Series are located at the ABC's Ultimo headquarters in Sydney, Australia. It is produced by approximately 10 employees, consisting of the presenter, producers, story editor, researchers, director, and production assistants.

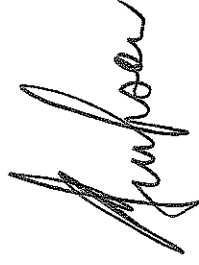
15. The Series is a weekly quarter-hour current affairs show. It is Australia's leading television show focusing on media analysis and commentary, with stories examining poor journalistic practices, conflicts of interest, abuse of power, and fraud by members of the media, such as reporters, editors, producers, and others. It has built a record of exposing errors and misconduct in the media – primarily media in Australia – since it first aired in 1989.

16. The Series has won several awards, such as the George Munster Award for Independent Journalism and three Walkley Awards, including the Gold Walkley, which is given each year to honor the best piece of journalism broadcast or published in the Australian media.

17. The Series targets an Australian audience and is broadcast only in Australia. The Series airs on the ABC television channel ABC1 on Monday nights at 9:20 p.m. and Wednesday mornings at 12:20 a.m., and on ABC's digital channel ABC2 on Tuesday mornings at 8:45 a.m. It attracts an average of approximately a million viewers each week on ABC1.

18. There is no advertising for the Series in Australia or anywhere else. An ABC on-air promotion is now televised about one hour before broadcast, but at the time of the Program, the only promotion would have been an announcement that the Series was returning at the beginning of each season.

19. The Series has its own website found within the ABC website at <http://www.abc.net.au/mediawatch/>. That website holds an archive containing written transcripts of programs aired during the past several years, in addition to other content and news articles



related to the topics cover by Series. The website has no advertising or marketing of the Series or anything else targeted or directed at the United States or New York.

20. The ABC does not license the Series through its Commercial Division or otherwise distribute it in the United States.

21. To the best of my knowledge and information, the programs in the Series are researched and produced in Australia. I am not aware of any employee of the ABC based in the United States who has been involved in the writing or production of the Series.

22. The "origin server" for the ABC's website is located in Sydney, New South Wales, Australia. Content is originally uploaded and stored in its server in Australia, although, since 2007, the ABC also contracts with a content delivery service which caches parts of the website on servers at various locations worldwide to allow faster access to content and for data security services.

THE JACK OF ALL TRADES PROGRAM

23. The *Jack of All Trades* Program about which plaintiffs complain in this action was broadcast once on the ABC1 channel at 9:20 on March 7, 2005, and was rebroadcast on ABC2 on three occasions on March 9, 2005 and three occasions on March 10, 2005. The general topic is an exploration of the media's reliance on Idema as an expert with respect to matters in Afghanistan and Iraq, particularly without reviewing or disclosing information about his background and his nature. Among the media reports so cited were investigative reports by defendant Eric Campbell that had previously aired on the ABC in 2002. The Program intersperses facts about Idema's background and nature with facts about the media's use of him as an "expert". I have sent a video copy of the Program to our counsel in New York (Davis Aff't, Ex. K).





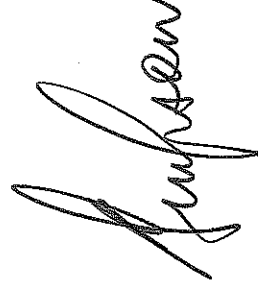
24. The Program includes three photographs allegedly showing Idema and Afghani men he held prisoner, identified in paragraph 35 of the complaint (Davis Aff't, Ex. A) (the "Torture Photos"), and clips of 5 seconds and 20 seconds from the several hours of video footage purportedly showing al Qaeda terrorists training in Afghanistan, identified in paragraph 46 of the complaint (the "Terrorist Training Tapes").

25. The Program was written, filmed and produced at ABC's studio at its Ultimo headquarters in Sydney, Australia. The executive producer of the show was Peter McEvoy; the researcher and story editor was Anne Delaney; and the story was presented on air by Liz Jackson, the host of the Program. All of them are Australian citizens and residents. Ms. Delaney is no longer employed by the ABC.

26. No ABC reporter or investigator traveled to the United States in connection with the research or production of this Program.

27. The Program has not been licensed, in whole or in part, for any use, and we have no plans to rebroadcast the Program or otherwise exploit it. It has not been broadcast to any viewers in the United States.

28. A written transcript of the Program is currently available online at <http://www.abc.net.au/mediawatch/transcripts/s1317953.htm>; and a copy is annexed to the Davis Aff't as Exhibit L. Some of the source materials featured therein (including the Torture Photos, but not including the brief portion of the Terrorist Training Tapes used on the Program) are also available on the ABC's Media Watch website. Copies of the Torture Photos are annexed to the Davis Aff't as Exhibit M. That material was uploaded on the *Media Watch* website within 24 hours of the Program's first broadcast on March 7, 2005. No portion of the Terrorist Training Tapes appears on the website.



29. The Torture Photos were not used by the ABC pursuant to any agreement made with or on behalf of any of the plaintiffs.

**THE WITNESSES, PROOF AND FOCUS OF EVENTS ARE ALL IN AUSTRALIA**

30. The purportedly wrongful use of the Torture Photos and Terrorist Training Tapes occurred (if at all) in the ABC's studios or where the Photos were uploaded to the website, both being in Sydney. The decision to use these materials, how much of them to use, whether those who produced the Program believed they needed to obtain a license in order to use the Torture Photos, whether the use of the Terrorist Training Tapes exceeded the license Idema admits he gave the ABC to broadcast these Tapes, and whether those who produced the Program knew whether the use of the Tapes or Photos was otherwise permitted, all must be determined by testimony from individuals who reside in Australia.

31. All documents, source materials, original footage, video out-takes, drafts of the script, research files, and other production documents and records related to the Program are located at ABC's Sydney headquarters.

32. The following is a list of witnesses we have been able to identify to date with relevant knowledge of the facts alleged in the complaint relating to the Program:

<u>Name</u>	<u>Title</u>	<u>Location</u>	<u>Current Status</u>
Peter McEvoy	Executive Producer of <i>Media Watch</i> at the time of Jack of All Trades Program	AU	ABC
Liz Jackson	On-Air Host of Program	AU	ABC
Anne Delaney	Primary Researcher for Program	AU	Left ABC, residing in Sydney, Australia
Jo Puccini	Current Executive Producer of Media Watch	AU	ABC



Name	Title	Location	Current Status
Arul Baskaran	Executive Producer, Multiplatform Production for ABC (Website)	AU	ABC
Bob Johnston	Manager, ABC News Online (Website)	AU	ABC
Eric Campbell	Reporter – a subject of the Program	AU	ABC
Bronwen Kiely	Foreign Newsdesk – worked with Eric Campbell re: Terrorist Training Tapes	AU	ABC
John Tulloh	Former Head of International Operations for ABC	AU	Left ABC, residing in New South Wales, Australia
Lisa McGregor	<i>Media Watch</i> researcher in 2005	AU	ABC
Leah Abernethy	<i>Media Watch</i> website coordinator in 2005	AU	ABC

33. In addition to the foregoing witnesses, the ABC would likely call additional witnesses, both factual and expert, to rebut the allegations by Idema against ABC (should these claims withstand upfront substantive motions) on such relevant areas as: (i) the history of ABC; (ii) ABC's practices and procedures as they relate to the charges in the complaint; and (iii) damages (or lack thereof) to Idema in Australia as a result of the Program.

34. To the extent the complaint pleads a defamation claim and claims that New York law applies to that claim (which the ABC disputes), I am advised that under United States law, specifically the First Amendment to the United States Constitution and the New York Constitution, whether the ABC will be held liable for having breached a duty of care owed to Idema will depend in large part on whether the ABC acted with reckless disregard of truth or calculated falsity or, at a bare minimum, whether it acted in a grossly irresponsible manner in accordance with the standards of news gathering in that community. The "community" in issue would be Australia.



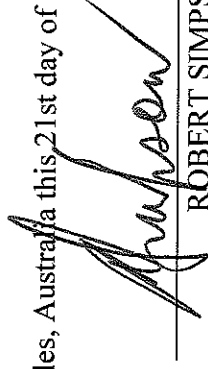
35. All of the relevant information, both documentary and testimony, with regard to the ABC's vetting practices, standards and procedures employed to check programs for accuracy in Australia and, separately, specific knowledge with regard to this plaintiff and/or the Torture Photos and Terrorist Training Tapes, will be located in Australia and established through testimony of Australian residents, many of whom are not ABC employees.

36. To the extent that plaintiffs complain that the ABC somehow breached a deal that Idema reached with Campbell in Afghanistan with regard to the Terrorist Training Tapes, any witnesses to that deal are either in Afghanistan or now in Australia, as explained in the accompanying Campbell Declaration. As set forth therein, Mr. Campbell is a citizen of and resides in Australia and, if served, would not be subject to the personal jurisdiction of this court.

37. For the foregoing reasons, and as set forth in the accompanying declarations and affidavit and under the standards set forth in the accompanying memorandum of law, the ABC respectfully requests that the complaint be dismissed without prejudice for lack of subject matter jurisdiction or, in the alternative, under the doctrine of *forum non conveniens*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Sydney, New South Wales, Australia this 21st day of May, 2008.



ROBERT SIMPSON